

**MINUTES FOR THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MAY 9, 2008  
TIME: 9:00 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HI 96813

Chairperson Laura Thielen called the meeting of the Board of Land and Natural Resources to order at 9:08 a.m. The following were in attendance:

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MEMBERS

Laura Thielen  
Ron Agor  
Tim Johns  
Dr. Sam Gon

Rob Pacheco  
Jerry Edlao  
Taryn Schuman

STAFF

Morris Atta, LD  
Ed Underwood, DOBOR  
Sam Lemmo, OCCL  
Curt Cottrell, DOFAW

Dan Quinn, SP  
Paul Conry, DOFAW  
Dan Polhemus, DAR  
Dale Bonard, DOFAW

OTHERS

Bill Wynhoff, Deputy AG  
Kyle Tresner, E-2  
Bruce Middleton, J-1  
Scott Mercier, J-2  
Jim Coon, J-2  
Greg Vanderlaan, J-2  
Shelly Kekuna, J-2  
Mark Fox, C-2  
Joe Faber, K-7  
Keikialoha Kekipi, K-7, C-1  
Frederick Honig, K-2  
Degray Vanderbilt, C-1  
Abbey Meyer, C-1  
Matthew Craig, F-3  
Deena Dray, D-4

Colin Lau, Deputy AG  
Greg Smith, E-2  
Janet Mandrell, J-1  
Beth King, J-2  
Cy Miyamoto, J-2  
Don Kellam, J-2  
Noa Napoleon, J-2  
Paul Mancini, K-1  
John Barsell, K-7  
Colette Machado, K-7, C-1  
Kaiwi Nui, C-1  
Lea Hong, C-1  
Yvonne Izu, K-6, K-5  
Marti Townsend, F-3  
Carl Meyer, F-1

Kathy Robello, D-3  
Matthew Iacchei, F-4

Lindsey McNally, D-5

{Note: language for deletion is [bracketed], new/added is underlined}

**Item A-1      January 25, 2006 Minutes, amended Item J-1.**

**Unanimously approved as submitted (Johns, Gon)**

**Item A-2      February 22, 2008 Minutes.**

**Unanimously approved as submitted (Pacheco, Edlao)**

Member Schuman recused herself.

**Item A-3      April 11, 2008 Minutes.**

**Item A-4      April 25, 2008 Minutes.**

**Deferred (Pacheco, Edlao) Not ready.**

**Item D-6      Consent to Assign General Lease No. S-3787 & S-3858, Warren Q.K. Yee and Ellen S. P. Yee, Trustees, Assignor, to Milo Nursery & Landscape Maintenance, Inc., Assignee, Waimanalo, Koolaupoko, Oahu, TMK: (1) 4-1-10:38 & 39.**

Morris Atta, Administrator for Land Division, explained that no premium is to be collected and that the trustees were here to answer questions.

**Unanimously approved as submitted (Johns, Schuman)**

**Item E-2      Request for Approval of a Special Use Permit for the Journey Foundation for an Unused Portion of Kalanai Section of Malaekahana State Recreation Area for a Youth Leadership Training Program**

Dan Quinn, Administrator for State Parks, gave background. He asked the Board to approve and to allow the Chairperson to set the fees. The attorney general's office has reviewed it.

The Board asked that because this is a pilot program to report back to the Board.

There was discussion about cultural or house sites which will not be affected by the temporary set-up of yurts. Mr. Quinn pointed out the area on the map.

Kyle Tresner representing Journey Foundation clarified that the set-up time is from May 19, 2008. June to August are the dates of the program itself. He understands his organization will be in compliance of any permits.

9:23 am Member Johns departed.

There was discussion and clarification about the liability insurance amount.

Mr. Tresner asked if the amount of 30 students was a cap or if it was approximate. The Board said they could change it to say approximately 30. He explained the local and foreign student ratio will be half.

Mr. Greg Smith, Manager for Gunstock Ranch which is across the park, reported his daughter participated in the program last year and expressed his support for this successful program.

**The Board:**

**Approved the submittal subject to the following amendments:**

**For the Department to work with the applicant to accommodate the date changes and to amend the submittal to increase the participants to approximately 32 youths.**

Chair Thielen informed Mr. Quinn and Mr. Tresner to report back to the Board.

**Unanimously approved as amended (Schuman, Pacheco)**

**Item E-1 Establishment of a Kokua Partnership Volunteer Agreement for Heeia State Park, Oahu**

Dan Quinn of State Parks asked to withdraw.

**Withdrawn (Agor, Schuman)**

**Item J-1 Denial for Requests of Contested Case Hearings from Bruce Middleton and Janet Mandrell**

**The Board may go into Executive Session pursuant to Section 92-5(a) (4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.**

Ed Underwood, Administrator for Division of Boating and Ocean Recreation (DOBOR), gave background and asked the Board for denial of contested case hearings.

Bruce Middleton didn't agree with Mr. Underwood's statement saying that the 3 petitions at the January 25, 2008 Board Meeting was denied and therefore Ms. Mandrell and Mr. Middleton don't have standing. But Mr. Middleton and Ms. Mandrell have standing because they have property interests in the permits for the slips. Mr. Underwood has not produced any evidence otherwise. Mr. Middleton objected to how this matter was handled by the Chair resulting in long delays in response to his letter only to be heard 6 meetings later. And also whether their due process was impinged due to these actions.

Ms. Janet Mandrell referred to the letter of March 12, 2008 recommending denial of her contested case hearing where she read paragraph 3 – "Rule making does not affect the rights, duties, or privileges of particular persons that would require a contested case hearing to be held." She commented if that was true then we wouldn't need a rule. The HECO reference doesn't have bearing to why she should be denied. It negates ever having a contested case hearing. Ms. Mandrell reported that DOBOR has started collecting on the parking fees May 1<sup>st</sup>. She feels she deserves a contested case hearing.

**9:40 am      Adjourned for Executive Session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.**

**9:50 am      Reconvened**

Member Agor moved to approve staff's recommendation. Member Schuman seconded.

Chair Thielen clarified the motion is to deny the request for a contested case hearing.

**Unanimously approved as submitted (Agor, Schuman)**

Mr. Middleton requested a contested case hearing. Chair Thielen said to file his request within 10 days.

**Item J-2      Recommend the Board Approve the Reissuance of Commercial Use Permits for Commercial Vessel Activities Taking Place on Kaanapali Beach and Near Shore Waters to the Applicants Listed in Exhibit A. Authorize the Chairperson to Approve Each Commercial Use Permit Once Approved as to Form by the Attorney General's Office. Submittal to be distributed.**

Submittal was distributed.

Numerous written testimony was submitted.

Ed Underwood representing DOBOR recommended the Board approve and noted recent issues with how commercial activity permits were issued for Kaanapali Beach and near shore waters. The rules were amended in 2003 that required the Board or authorized

representative to issue these types of permits. Upon consultation with the Attorney General's office staff recommends parasailing and thrill craft pwc (personal watercraft) operations permitted for the Kaanapali near shore waters to be continued issuance of their use permits which were amended in 1996 which is good for up to 20 years with 5 year renewals. Staff will issue an addendum to that permit to allow these operations to embark and disembark passengers from Kaanapali Beach. Also part of the amended rule is the ability to run 5 monohull vessels where those permits were based on shuttling operations to run passengers between Kaanapali Beach and other commercial entities which staff will continue issuing as a yearly addendum. Ten catamarans are allowed to operate from Kaanapali Beach and staff will reissue those permits to embark and disembark passengers from the beach. And staff will bring forward to the Chairperson any other use permit from Exhibit A on a yearly basis to embark or disembark passengers from Kaanapali Beach.

In the past the parasailing and thrill craft operators were allowed to have an umbrella, a chair and to greet passengers on Kaanapali Beach itself. There have been surf schools and kayak operators who were allowed to store equipment on the beach. The hotel operators have committed to pre-set cabanas, umbrellas, chairs and such on the beach in anticipation of guests coming down. After looking at everything going on at the beach, staff recommends that these types of activities shouldn't be allowed. The parasailing and jet ski season is starting May 16<sup>th</sup> and they want to ensure continued operation with a use permit from the Board. Staff is going to Maui next week to address the concerns of the operators regarding the setting up of equipment over the years. Staff will come back to the Board regarding these types of activities.

Maui staff confirmed that these are the current operators, but after talking to some of the operators some of the companies listed haven't ran a boat for some time. Staff recommended that before issuing a commercial use permit that these operators are in full compliance with all the Administrative Rules first before bringing it back to the Chairperson to authorize because there is set criteria for the issuance of commercial use permits. It is not a blanket re-issuance. An example is the trampoline is no long off of Kaanapali. Mr. Underwood suggested that the District Manager of Maui work with the Lahaina Harbors staff to ensure that these are the vessels operating from Kaanapali Beach before making further recommendations to issue the permit.

Member Edlao suggested making an amendment to the recommendation regarding full compliance before issuing a permit. He doesn't want the Board to approve everyone on the list as written. Mr. Edlao witnessed the problems on Kaanapali Beach and expressed his concerns. The beach needs to be cleaned up and he understands it will be difficult.

Mr. Underwood reminded the Board that back in 2003 that the hotels were allowed to preset a limited number of cabanas and chairs and allowed some operators to set up on the beach. Since then there have been challenges to how these permits were issued and whether they should be issued at all. Staff will meet with the operators on the set up and come back to the Board with a recommendation for the beach itself.

Chair Thielen asked whether the Board should continue with the approval for the permit on the water only. Mr. Underwood acknowledged that.

Member Agor asked about the safety record where Mr. Underwood responded it's very good because he knows of no incidents. These operators have been helpful to DOBOR by volunteering to install buoys.

Member Edlao suggested putting up signs when catamarans are loading and unloading which could be worked out on Maui.

Member Pacheco asked what the minimum economic activity is to maintain a boat. Mr. Underwood replied that parasailing and thrill craft is 3% of their gross or a flat fee and are not required to reach a minimum gross receipt.

Member Pacheco inquired whether there was a cap on the number of permits. If there is why are there multiple entities with numerous permits that are the same entities, but organized differently? How do you handle that?

Mr. Underwood explained that was the challenge because originally it was issued by the Chair in 2003 then it was brought back to Maui District and the Lahaina Harbor staff was issuing. All these permits are accounted for. The 5 monohull vessel rule was giving staff problems, but a vessel with a commercial use permit could run a tender to the boat. That is where staff was getting all these added on activities. The intent of the rule is to say 10 catamarans and 5 monohull vessels that were intended for the beach. Because of the ambiguity of that rule and how it can be interpreted staff is cleaning it up now.

Member Pacheco felt this process is so convoluted with different needs on the water and on land. He would like to see the division simplify this and have activities under one permit. Also look at the ownership of these permit holders because having more than one permit for this area is unfair for competition and the public.

Chair Thielen summarized Mr. Underwood's background on this matter.

Scott Mercier representing West Maui Parasail has a permit and a Kaanapali commercial cap permit that allows them to operate on the beach as of last year. He described the process to renew the permit. Mr. Mercier was confused because Mr. Underwood told him this would go through, but this information says otherwise. The operators could have talked to staff about it sooner instead of getting this last minute. He doesn't think his company will be able to operate and suggested going with what was approved years ago or go with a revocable permit. Mr. Mercier was concerned that his staff won't have sun protection without the umbrella(s), a chair or to allow them to store life jackets on the beach. He referred to his written testimony regarding the permit on what they can or cannot do or have on the beach. There are no buoys in front of the Hyatt Regency for egress and ingress because a storm took them out and have not been replaced. His company knows where the egress and ingress are. It isn't marked by buoys. The person on the beach makes sure to keep swimmers clear of the boat. He agrees with Mr.

Underwood on cleaning things up, but disagrees with not allowing his company to check people in to sign liability waivers or get life jackets to keep things safe. He suggested a continuation for 90 days or discuss what works. He doesn't know how his company can address all the liability issues.

In answer to Member Pacheco's question on K-Cap, Mr. Underwood explained it was an addendum added on to the commercial use permit for use of the beach. The reason for the vessel use permit is because Boating can't add beach use under a commercial use permit. It would be like a revocable permit and that is why staff is in consultation with the AG's office and Land Division on how to best address this.

Beth King owner of a Kaanapali personal watercraft business agrees with the Division. She is glad the umbrella and life jacket issue will be addressed. She asked to use pwc when referring to thrill craft because thrill craft is considered derogatory.

Jim Coons, President of Ocean Tourism Coalition, felt Mr. Edlao's comments were right on regarding the egress and ingress issues. He thought this submittal was premature and asked to defer this until the complicated issues are resolved referring to the parasailing operations.

Cy Miyamoto owner of Island Style Adventures surf school on Kaanapali Beach operates off of Marriott Hotel and a booth near Leilani's Restaurant. He gave history from 2003 and 2004 affecting his surf school and others. He would like to have an umbrella for his staff on the beach. Mr. Miyamoto described the process in obtaining the permits and noted how the harbor masters decided on those permits. The major complaint is the preset by certain companies.

Greg VanderLaan, a Kaanapali parasail operator, had provided written testimony and related his rule making involvement since the 1980s and 2003. He apologized to the Kaanapali operators for starting this because he questioned the rule to understand it. Referring to the monohull rule it was intended to establish an existing status quo on the number of monohulls operating on Kaanapali Beach and to establish a permitting system on how companies operate on the beach. It was not meant to provide outside shuttle service. He concurs with the equipment on the beach. He suggested referring to the Board meetings in 2001 and 2003.

Chair Thielen clarified that the meeting on Maui will give further definition on what is permissible in general on the beach which staff will bring back to the Board anything specific.

Don Kellam representing Kellam Bros. Inc. has one of the monohull permits from the harbor master. He reiterated the umbrella issue and safety issues. They have been there since 1976 providing a service. He doesn't feel equipment and cabanas should be lumped together in the same permit. The rules already exist to clean the beach which they already do. Don't throw every body off and start over without their input.

Shelly Kekuna, Executive Director for the Kaanapali Beach Association, thanked the Board for considering deferring these issues.

Noa Napoleon came as a non-commercial testifier and concerned that these issues are treated case-by-case. He requested this Board have DOBOR do comprehensive rule writing before they create or authorize a permit for any kind of use in the State of Hawaii. It is hard to mitigate without comprehensive rules.

Member Agor asked whether this permit pertains to current active businesses. Mr. Underwood acknowledged that, but would like to ensure each business is what they say they are and meet all the requirements. Chair Thielen suggested an amendment to #1 to authorize the Chairperson to approve the reissuance of the commercial use permits in conformance to the above discussion and subject to compliance of DOBOR's rules, regulations and operation.

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There are actually 3 things here. One is the parasailing and pwc operators' ability to set up umbrellas on the beach for the purpose of greeting customers. Second is storage of equipment during the day. Third is the preset of cabanas, chairs and umbrellas. These need further discussion because of inconsistencies across the State before making a determination on whether to continue that practice or what is permissible in general on beaches versus what requires an additional permit. The intention of staff is to come back to this Board to approve. She asked how many parasailing operations will expire in the next 60 days. Mr. Underwood believes there are 3 in May.

Member Edlao felt more things will come up at the Maui meeting and suggested deferring to get some good solid rules and doing it the right way.

11:00 am      Member Johns returned.

Chair Thielen suggested setting up a determination to authorize continuation of the existing practice for up to another 60 days and direct staff to come back with a recommendation. Because the Board may have to handle it differently compared to the past because DOBOR may not have the authority to issue a permit for the beach. It would accept the recommendation of the use permits and defer decision on the setting and storing of equipment for 60 days with the understanding that past practices can continue during that period.

Mr. Underwood felt 60 days should be sufficient for staff to come up with guidelines. We should start moving these to the Admin Rules to make it clear on what happens to any beach because Kaanapali is tied to Waikiki. 90 days would be better.

Member Edlao suggested adding to recommendation #2 "to amend and approve" that way the Chair can say these guys are no longer here and doesn't have to come back to the Board.

Member Pacheco asked whether the hotel operators have a DOBOR permit to set up, which they do.

Mr. Underwood explained that is a concern whether or not DOBOR can issue a permit for that. It's for commercial vessels loading and unloading. Staff is recommending it shouldn't be allowed. In Waikiki pre-setting is not allowed anywhere and vendors are told this. Staff is trying for uniformity throughout the State.

Member Pacheco was uncomfortable with the permits coming down on the operators and he wanted to be clear on this. These permits are for 1 year which they are.

Chair Thielen noted the Board is directing staff to come back to the Board before the end of 90 days with a recommendation. The understanding is if staff was not ready to move forward this Board would work with the existing operators. It would be condition #4.

Member Johns recused because he hadn't heard the public testimony.

**The Board:**

**Approved renewal of the commercial use activity permits and continued practice of the set up or storing of equipment on the beach up to 90 days (which may not be noted in the permit). Staff will return to this Board before the 90 days with the set up and equipment recommendation. DOBOR and Land Division staff will meet with operators on Maui to address the set up and storing issues.**

**Unanimously approved as amended (Edlao, Agor)**

**Item C-2 Request Approval to Terminate the Nature Conservancy's Forest Stewardship Program Contract #51097**

Member Sam Gon recused himself.

Paul Conry, Administrator for Division of Forestry & Wildlife (DOFAW), explained background and staff recommends the Board approve. The \$132,426.00 goes back into the Forest Stewardship Special Fund and described what it supports.

Member Johns asked if there is not a lease sale or the new land owner is not interested to continue long term management The Nature Conservancy (TNC) will hold the lease without management. This is for protection of the property.

Mr. Conry said there is no expenditure of funds this year. It's possible that this preserve could go back to the Forest Stewardship Program in the future if there is a third party who is interested. Or it could go under one of DOFAW's land assistance programs.

Mark Fox from the Nature Conservancy felt it important to terminate this contract because of limited resources and to refocus their own conservation management priorities on more intact native landscapes in the State of Hawaii. Honouliuli is a mix of native and

non-native habitats which TNC is still managing through the Army Environmental Program and 2 of their own staff. He cited the expenditure amounts for TNC this year and for the Army. Also what projects will be covered. He gave more background reiterating some of Mr. Conry's testimony.

There was discussion on whether to use that money to procure this property, but the State has a certain procurement process based on what the Board determines from the fund.

Member Johns noted when he was employed with Campbell he negotiated the easement for TNC, but asked should it bring into question TNC's commitment to any of the other preserves that it has in the state.

Mr. Fox replied no because this is the only one in the Forest Stewardship Program. The rest are in the Natural Area Partnership Program which TNC is committed to conservation in perpetuity. He explained the forest stewardship program needs a 30 year commitment with only 10 year matching funds which would be a challenge to the Conservancy. It was TNC's choice to go in it and to leave it.

Mr. Conry agreed and noted that the Board recognized this problem last year by setting the policy.

Chair Thielen referred to Suzanne Case's 2000 letter regarding the 50 year lease. Mr. Fox explained if there is a sale for TNC to revert it back to the preserve or if there is another buyer not interested in conservation TNC wants to keep that leasehold to protect the conditions to ensure conservation management.

Member Johns moved to approve staff recommendation with the amendment that the payback will go into the Forest Stewardship Special Fund.

Member Schuman seconded.

**Unanimously approved as amended (Johns, Schuman)**

**The payback will go into the Forest Stewardship Special Fund.**

**Item K-1 Conservation District Enforcement File MA 08-22 Regarding an Alleged Unauthorized Shoreline Structure by Sally Dodge, Located at Makena, Maui, Vicinity of TMK: 2-1-06:090**

Sam Lemmo, Administrator for Office of Conservation & Coastal Lands (OCCL), briefed the Board on the background and presented photos and/or maps. Staff determined that the wall and planter were built seaward and would come under their jurisdiction. The other issue is the rock wall below the deck and planter. Staff asked the Board to apply the no tolerance policy to this case asking the owner to remove the structure, planter and fill. Also assess \$1,000 for administrative costs. Staff was informed that a previous land owner had built the wall.

Paul Mancini asked to defer to allow time to research and compile data. He related history background. The owners would like to ask for an easement if the facts support it. There was discussion regarding the shoreline survey.

Mr. Lemmo explained that the deck is considered non-conforming use as shown in the photo.

Also the Board asked for clarification on the date of Oct. 2008 to be Oct. 2007.

Chair Thielen stated to Mr. Mancini that if it was discovered that this was built after the no tolerance policy his client might not be asking to keep it. You may be asking for a factual investigation where you're given some certainty it should be removed or not.

Mr. Mancini said he will do his best to get it sooner than July. He needs to talk to the neighbors that were there at that time.

Mr. Lemmo commented whether it was built after 1995 and before 1999 it would not change staff's recommendation. It is not an appropriate structure for the site.

Mr. Mancini related it is an emotional burden to the owners and Ms. Dodge was present.

**Deferred ( Edlao, Johns)**

**For 30 days to the June 27, 2008 Board meeting.**

**Item K-7 Conservation District Use Application (CDUA) HA-3447 to Establish and Rebuild the 1893 "Nameless" Fishpond – Referred to as "Kapoho Fishpond" by John Barsell at Kapoho Bay, Kapoho, Puna, Island of Hawaii, TMK: (3) 1-4-002:036.**

Written testimony was received.

Sam Lemmo of OCCL described background.

Member Johns noted that submerged lands cannot be owned, but under Hawaii law fishponds can be owned under private parties. The State would sign on as a co-applicant.

Mr. Lemmo said that an easement might be needed for the wall extends into private property. DAR and HP were involved where the applicant responded to questions. An archaeological mitigation plan needs to be finalized before beginning any restoration. Also impacts to native Hawaiian cultural practices, public access and what are the affect to fishing which could change the uses of the area. There is support for the native wildlife. The owners object to the public having any right to use the area because it is private property.

There was more discussion regarding the fishpond use, navigable waters, and possibly deferring.

Joe Faber a project consultant on fish ponds has experience working on Molokai fishponds. He noted that the court has sided with owners that the government can govern, but can't allow the public to use the fishponds. He gave the example of Kako'o lagoon. Not gating would make it more productive and allow the turtles in.

Keikialoha Kekipi concerned for the native Hawaiian gathering rights and caring for the area. He doesn't think the owner will malama it because he owns it to benefit himself and his family. Mr. Kekipi's family is from the area and understands how to treat the area. They are not there to steal when it is their homeland. There are certain people in the public who don't know how to malama aina.

Colette Machado explained that Joe Faber was a student who worked on the fishponds and she has a high respect for him. He is one of the few experts.

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Chair Thielen felt there are some legal issues that the Board would benefit counsel with their deputy attorney general at the next meeting.

**Deferred (Pacheco, Agor)**

**To give the Board's deputy attorney general time to examine this issue and bring it back to the next Board meeting.**

**Item K-2 Conservation District Enforcement File MA 08-12 Regarding Alleged Unauthorized Improvements on State-owned Land by Frederick Honig Located at Haiku, Maui, Makai of TMK: (2) 2-8-004:032**

Sam Lemmo representing OCCL gave background.

Frederick Honig of Kealii Nui Botanical Gardens distributed his written testimony. He described what they do there, the history, public access, they have a trained fireman and safety person and he wants trail registered as historical. The original property line is to the ocean. Their archaeologist followed with what was already there. They put a cable in for safety.

Mr. Cottrell noted based on the Queen Highways Act there is no trail in this location. There was more discussion with Land Division that there was no permission to make improvements.

Chair Thielen suggested no less than a month to defer.

Member Edlao motioned to accept staffs recommendation effective 30 days from now. Member Johns seconded.

Chair Thielen summarized to approve staffs recommendation, but defer implementation for 1 month during that time Mr. Honig would meet with Land Division regarding an easement. The recommendation is to remove the improvements.

**The Board:**

**Approved staffs recommendation, but defer implementation for 1 month.  
The recommendation is to remove the improvements.**

**Unanimously approved as submitted deferring action for 1 month. (Edlao, Johns)**

**1:13 pm Member Jerry Edlao departed. Adjourned for recess.**

**1:20 pm Reconvened.**

**Item C-1 Review and Approval of Projects Recommendation by the Legacy Land Conservation Commission for Funding from the Fiscal Year 2008 Legacy Land Conservation Program (Land Conservation Fund)**

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Member Johns recused.

Written testimony was received.

Paul Conry representing DOFAW reported background and apologized for the following corrections: page 1 title – Delete “Interim” in front of Chairperson. Under the 1<sup>st</sup> paragraph of Legacy Land Conservation Commission Recommendation “the following 6” should be 5.

Dale Bonard of DOFAW gave history background noting that this is similar to previous years. Staff has met the \$4.7 million cap. The commission and the legislature have approved this.

Mr. Conry spoke regarding testimony received on whether there was authority for KAL’s (Ke ‘Aupuni Lokahi, Inc.) executive to submit the application. Staff looked at it and part of the process is staff requires that if it is a non-profit they must provide evidence that it is approved by their Board and people signing the contract are authorized to do so. He suggested developing an additional condition that could be added that deals with this issue. Add a condition to recommendation #1 – The submission by non-profit awardees of evidence of the authority of the awardee’s representative to sign a grant agreement for the awardee subject to review and approval by the Department of the Attorney General.

Chair Thielen added if one or more of these organizations do not have the authority staff will automatically go to the next order of ranking.

Per Member Gon’s inquiry Mr. Bonard described commission member Kaiwi Nui as their cultural representative who is OHA’s Conservation Land Manager. Kaiwi Nui brings insight to Native Hawaiian issues and viewpoints. He and Mr. Bonard visited the Molokai property and met with the people. Mr. Bonard read Mr. Nui’s written testimony saying that kapu land is sacred and noa land is public. If associated with money or own personal reasons it will be decided by akua. It was their opinion to proceed as presented.

Colette Machado of Molokai was part of the review and felt it was a good process. She referred to the Molokai Land Use Plan that there was some opposition and some support. She described who was involved and that this is a matter of personality differences.

Eddie Misaki, Land Trust Board Member and Nature Conservancy Manager, was born and raised on Molokai. He noted that to preserve the land is to own it and he described the land trust and Kawaikapu. The Land Trust is about preserving land, the culture and lifestyle of Molokai. The mission of the Land Trust is to put the land in a state where it will never be speculated again.

Degray Vanderbilt is a 30 yr. Molokai resident, was with the Molokai Planning Commission, advises the Commission on Water Resource Management and a member of the Molokai General Plan Committee distributed OHA article and he is for preserving the land. He worked on the Molokai Land Use Plan. He cited mis-representation in the article, Board testimony and on the Land Trust. He felt the community hasn't been involved.

Keikialoha Kekipi felt the Land Trust is a good idea. He concerned with the differences between Walter Ritte and Colette Machado because of the responsibilities they have.

Lea Hong the Hawaiian Islands Program Director for Trust for Public Lands presented pictures and her written testimony on Ma'o and Kawa projects. She urged the Board approve the Molokai project.

Abbey Mayer, Director of the Office of State Planning and former Director for Ke Aupuni Lokahi, had submitted written testimony. He explained how Ke Aupuni Lokahi approves applications through their executive committee and the USDA tracks their projects. Each task requires Board (Land Trust) approval to enter into the USDA system. There are no conflicts of interest for members on the Land Trust and Ke Aupuni Lokahi. He reiterated that it pains him to see the rifts that developed and hope the Board doesn't make decisions based on these personal differences.

Chair Thielen asked if there was application information regarding the long term funding. Mr. Bonard replied no because it was before the lost of funding, but the Molokai Land Trust has \$1/2 a million, it has a strong Board that knows how to raise the resources and he knows that the commission will steward this land.

Mr. Conry explained the statute legislation authorizing Legacy Land. Mr. Bonard added should the Molokai Land Trust not be able to handle the property then it goes back to the State. Mr. Conry added they would have to transfer to an appropriate land conservation agency with county, state or federal. He had distributed an amendment to recommendation 1 in regards to this.

Mr. Bonard described the Kauai Land Trust and that Molokai has the assets to grow. If Molokai is not approved then the owners would sell the property which might go to someone who may or may not be conservation minded.

Member Gon moved to approve staff's recommendation as amended as previously noted by Mr. Conry and the addition of condition "h."

**The Board:**

**Amended staff's submittal by deleting "Interim" before Chairperson, near bottom of page 1 change "following six" to "following five" and the following condition is added to recommendation 1:**

- h. the submission, by nonprofit awardees, of evidence of the authority of the awardees' representative to sign the grant agreement for the awardee, subject to review and approval by the Department of the Attorney General.**

**Unanimously approved as amended (Gon, Agor)**

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**Item K-6 Time Extension Request for Conservation District Use Application (CDUA) OA-3412 for a Portion of the Kaloi Gulch Drainage Way Improvements by HASEKO Located at Oneula Beach Park, Ewa, Oahu, Makai of TMK:(1) 9-1-012:025 and (1) 9-1-011:007**

Sam Lemmo representing OCCL presented background and noted this is in contested case hearing.

Yvonne Izu of HASEKO was present to answer questions.

**Unanimously approved as submitted (Schuman, Gon)**

**Item K-5 Amendment to Related Conservation District Use Permit OA-2670, Condition #17 and Conservation District Use Application (CDUA) OA-3450 for the Establishment of the Kalaeloa Artificial Reef and the Emplacement of the First Increment of Reef-Building Material by the Department of Land and Natural Resources Division of Aquatic Resources Located Offshore of Kalaeloa, island of Oahu**

Sam Lemmo of OCCL informed the Board that this has 2 parts. First part is a recommendation and second part is establishment of a CDUP which he described the background. He requested permission to amend the condition requiring the reef in the original CDUP to be in conformance in what is before you today. Staff recommends approval of amendment to condition 17 of CDUP 2670 which he detailed.

Yvonne Izu reported that HASEKO has been working with DAR for several years which resulted in this MOA. HASEKO is in agreement and totally supports this effort.

**Unanimously approved as submitted (Johns, Gon)**

**Item K-3 Time Extension Request for Conservation District Use Permit (CDUP) HA-2969 for Saddle Road Improvements Section II (Milepost 28-42) by the U.S. Department of Transportation Federal Highway Administration Central Federal Lands Highway Division Located at Saddle Road, County of Hawaii, Portions of TMKs: (3) 3-8-001: 1, 7, 8 & 13; (3) 4-4-015: 4 & 8; (3) 4-4-016: 3, 5 & 6**

Sam Lemmo, Administrator for OCCL, asked for time extension and explained why.

**Unanimously approved as submitted (Johns, Schuman)**

**Item K-4 Memorandum of Agreement Between the University of Hawaii and the Department of Land and Natural Resources to Provide Funding for a Beach Management Plan for Kailua Beach, Oahu**

Sam Lemmo of OCCL informed the Board on the background.

**Unanimously approved as submitted (Schuman, Gon)**

**Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Matthew Craig, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Reef Fish Life History Research Activities**

Dan Polhemus, Administrator for Division of Aquatic Resources (DAR), reported this is renewal work previously permitted by this Board and gave background.

Matthew Craig is glad this is done and to have a Hawaiian practitioner on board.

Marti Townsend of KAHEA presented her written testimony. She concerned with the sport fishing and manipulation by Westpac. There is room for improvement.

**Unanimously approved as submitted (Johns, Schuman)**

**Item D-4 Amend Prior Board Action of July 28, 2006, Item D-3; Mutual Cancellation of General Lease No. 4411 and Issuance of a 30-year Direct Lease to Diamond Head Theatre, Inc. for Production of Live Theater and Allied Purposes, including Education in Theatre Art Purposes; Honolulu, Oahu, TMK: (1) 3-2-030:001.**

Member Johns recused himself.

Morris Atta representing Land Division asked to amend, cancel and issue lease. He elaborated on the background of the recommendations.

Deena Dray, Executive Director of Diamond Head Theatre supports staff's recommendation and understands all conditions.

**Unanimously approved as submitted (Gon, Schuman)**

**Item F-1 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Carl Meyer, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Top Predator Population Research Activities**

Dan Polhemus representing DAR gave background on this renewal.

Carl Meyer was hear to answer any questions.

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The Board suggested staff amend staff's recommendation to reference special conditions.

Marti Townsend representing KAHEA concerned that Mr. Meyer might need a CDUP and doesn't want to overlook anything. She acknowledged it's an excellent application.

Mr. Polhemus reported after speaking to Mr. Lemmo that it needs approval of a site plan. It was addressed in 2006. These receivers are swapped out and are not permanent. He explained the history on this.

Member Johns noted a CDUP is not needed because it is not technically a use of land, but he doesn't recall who reviewed this.

Member Gon always wondered what the extent is for each check mark.

Mr. Polhemus clarified that it is a Monument Permit which covers State and Federal waters. Applicant can legally discharge outside of State waters.

The Board suggested Mr. Polhemus check on the land use and for DAR to meet with OCCL to determine when a CDUP might be needed.

**Unanimously approved as submitted (Agor, Schuman)**

**Item D-3 Issuance of Right-of- Entry Permit to University of California-Berkeley onto State Lands at Makeanehu, Kaihooa-Pahinahina, North Kohala, Hawaii, TMK: (3) 5-8-01:6 & 12; 5-9-03: 1 & 4; and 5-9-04:8.**

[Member Gon and ]Member Johns recused.

Morris Atta of Land Division informed the Board on background. Staff approves request.

Chair Thielen asked to put in a condition to obtain comments from SHPD it may be subject to conditions recommended by the SHPD. She concerned with people doing archaeological without SHPD comments.

Kathy Robello, Archaeologist for UC Berkeley has the SHPD permit to come to Hawaii.

**The Board:**

**Amended staff's recommendation by adding an additional recommendation that the applicant be required to comply with all requirements and conditions imposed by the State Historic Preservation Division in the event any sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered. Otherwise, the Land Board approved staff's recommendations as submitted.**

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**Unanimously approved as amended. (Gon, Agor)**

**Item D-5 Re-submittal-Affirm the Encroachment Area; Grant of Term, Non-Exclusive Easement to Garrett Frank Saikley Trust for Revetment Purposes, Kuliouou, Honolulu, Oahu, TMK: (1) 3-8-1:1 portion. Submittal to be distributed.**

Submittal was distributed.

Morris Atta for Land Division stated this is a re-submittal and related what occurred at the last Board meeting. It was found that this is not an unauthorized structure for purposes of shoreline certification under HAR § 13-222-19. This does not establish, create or infer rights to maintain or repair the structure on the part of the property owner as well as duty or obligation for the State to do the same. Mr. Atta referred to Mr. Saikley's counsel, Tim Lui-Kwan, argued that the structure was ratified by the previous Board. The deputy attorney general agreed because under these facts it's not worth fighting.

Chair Thielen asked to defer to give the Board time to review submittal and develop any policy.

Lindsey McNeely representing Mr. Saikley noted they intended to file a supplemental submission to the Board outlining an argument that was made orally in addition to the last submission.

The Board suggested to hold off until the next Board meeting.

**Deferred (Gon, Schuman) All ayes except for Member Johns.**

**The Board deferred the matter for 2 weeks until the next board meeting to allow additional time for the Deputy Attorney General to make a recommendation regarding Applicant's request to withdraw his easement application.**

**Item F-5 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Joshua Reece, Washington University in Saint Louis, for Access to State Waters to Conduct Moray Eel Research Activities**

Dan Polhemus representing DAR asked to withdraw.

**Withdrawn (Johns, Agor)**

**Item F-2 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Dr. Isabella Abbott, University of Hawaii, Department of Botany, for Access to State Waters to Conduct Algal Research Activities**

Member Johns recused himself.

Dan Polhemus of DAR gave background.

Marti Townsend of KAHEA stated her testimony stands.

**Unanimously approved as submitted. (Schuman, Gon)**

**Item F-4 Request for Authorization and Approval to Issue a Papahanaumokuakea Marine National Monument Research Permit to Matthew Iacchei, University of Hawaii, Department of Zoology, for Access to State Waters to Conduct Lobster Genetic Research Activities**

Dan Polhemus for DAR reported on background.

Matthew Iacchei of UH was here to answer questions.

Marti Townsend representing KAHEA reiterated her testimony stands.

**Unanimously approved as submitted. (Johns, Gon)**

**Item D-7 Amend Grant of Non-Exclusive Easement S-5827 for Seawall Purposes to Basil Gomez and Donna Marron at Kaalaea, Koolaupoko, Oahu, TMK: (1) 4-7-16:60 Seaward.**

Morris Atta of Land Division explained amendment which was built prior to 1999.

**The Board:**

Amended staff's recommendation by changing the first recommendation to read: "Amend Grant of Non-Exclusive Easement S-5827 by revising the easement area as determined by the DAGS Survey Division and the consideration of the easement be adjusted accordingly;" and by amending the character of use for the easement as including landscaping purposes. Otherwise, the Land Board approved staff's recommendation as submitted.

**Unanimously approved as amended. (Johns, Gon)**

- Item D-1** Consent to Assign General Lease No. S-3603, Art K.K. Wong and Cynthia L. Wong, Assignor, to Jieyu Shepard, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-49:15 & 16.
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- Item D-2** Consent to Assign General Lease No. S-5569, Alfred Seabury, Assignor, to Mark Allen and Jonaliza Allen, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-49:01
- Item D-8** Amend Prior Board Action of December 14, 2007, (Agenda Item D-20), Cancellation of Grant of Non-Exclusive Easement Bearing General Lease No. S-5172 to Stanley Chun and Katherine S. Chun and Grant of Term, Non-Exclusive Easement to Gilbert K. Chun and Leialoha K. Chun for Seawall Purposes, Kahaluu, Koolaupoko, Oahu, TMK: (1) 4-7-019:26 (seaward).

**Unanimously approved as submitted. (Gon, Johns)**

- Item L-1** Approval for Award of Construction Contract - Job No. 500BK41A Waimea Valley Emergency Rockfall Mitigation, Kauai
- Item L-2** Approval for Award of Construction Contract - Job No. H46C614A, Diamond Head Rockfall Mitigation, Phase I Oahu, Hawaii
- Item L-3** Approval for Award of Construction Contract - Job. No. B72D071A, Keehi Small Boat Harbor, Replacement of Piers 100 and 200, Oahu, Hawaii
- Item L-4** Certification of Election of East Kauai Soil and Water Conservation District Directors
- Item L-5** Approval to Enter Cooperative Agreement with the City and County of Honolulu for North Shore Regional Wastewater Alternatives Project

**Unanimously approved as submitted. (Johns, Agor)**

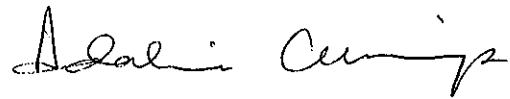
**Item M-1 Issuance of Fuel Facility Lease Above It All, Inc. Kona International Airport at Keahole**

**Unanimously approved as submitted. (Gon, Johns)**

**Adjourned (Johns, Gon)**

There being no further business, Chairperson Thielen adjourned the meeting at 3:13 p.m. Recordings of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings  
Land Board Secretary

Approved for submittal:



Laura Thielen  
Chairperson  
Department of Land and Natural Resources